



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2018-0331]

Hours of Service of Drivers: National Mobile Shower and Catering Association; Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that it has received an application for exemption from the National Mobile Shower and Catering Association (NMSCA) from various provisions of the Federal hours-of-service (HOS) rules for commercial motor vehicle (CMV) drivers. The NMSCA requests an exemption to allow their member companies operating under a “Resource Order” to: (1) extend the 14-hour duty period to no more than 16 hours; (2) not include “waiting time” while not performing duties in the calculation of the 16-hour duty period; (3) not comply with the minimum 30-minute rest break provision; (4) extend the maximum 60 hours on duty in any 7-day period to 80 hours on duty in any 7-day period; (5) extend the 11 hours of driving time to 12 hours; and, (6) extend the “8 days in 30” exception in the electronic logging device (ELD) rule to “12 days in 30.” The requested exemption is made on behalf of those drivers employed by NMSCA member companies engaged in the transportation of equipment that provides food and water services to Federally-contracted forest firefighters and similar emergency workers who establish temporary base camps and have immediate need of food and water services near fire scenes. FMCSA requests public comment on the NMSCA application for exemption.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER.]

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Number FMCSA-2018-0331 by any of the following methods:

- Federal eRulemaking Portal: www.regulations.gov. See the Public Participation and Request for Comments section below for further information.
- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- Fax: 1-202-493-2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to www.regulations.gov, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to www.regulations.gov at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202-366-2722. E-mail: MCPSD@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2018-0331), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to www.regulations.gov and put the docket number, "FMCSA-2018-0331" in the "Keyword" box, and click "Search." When the

new screen appears, click on “Comment Now!” button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period and may grant or not grant this application based on your comments.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also

specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Request for Exemption

The National Mobile Shower and Catering Association (NMSCA) requests an exemption from certain hours-of-service (HOS) regulations for their member companies' drivers who are responding under a "Resource Order." A Resource Order is a task order issued by a Federal Agency directing firefighters and supporting personnel to respond to forest fires and similar emergencies. They specifically request that while operating under the exemption their drivers and carriers: (1) may extend the 14-hour duty period to no more than 16 hours; (2) need not include "waiting time" while performing duties in the calculation of the 16-hour period; (3) need not comply with the minimum 30-minute rest break provision; (4) may extend the maximum 60 hours on duty in any 7 days to 80 hours on duty in any 7 days; (5) may extend the 11 hours of driving time to 12 hours; and, (6) may extend the "8 days in 30" provision for exemption from use of an electronic logging device to "12 days in 30."

The NMSCA seeks the exemption for a group of approximately 30 member companies who are strategically positioned in the Western states. Wildfires occur frequently during certain months of the year, especially in Western states. To fight these fires, the National Forest Service and similar agencies call upon Federally-contracted private fire-fighting companies, who are exempt from the majority of the Federal Motor Carrier Safety Regulations (FMCSRs) [49 CFR 390.3T(f)(5)] when they respond. Upon arriving near the fire scene, the firefighters establish a base camp where they will remain for a period ranging from a few days to a month, and will quickly require food and drinking water. To meet that need, the responsible government agency will issue a

Resource Order to the nearest mobile shower and catering company that is under contract.

Most of the government contract work for these services is seasonal. According to NMSCA, the specialized equipment utilized by their member companies travels comparatively few miles per year, generally not exceeding 5,000 miles, and almost exclusively in response to government contract orders. As there are a limited number of private contractors who have the capability and equipment to fulfill the government contract requirements, the territories covered by each contractor can be quite large. Wildfires and natural disasters are unpredictable and make it difficult to have assets prepositioned for an incident. When one contractor is called out to an incident, the nearest contractor must cover both their regional area and the one no longer covered by a contractor on an incident. At busy times of the year resources are stretched and travel distances are often increased, and therefore NMSCA contractors are often called on to travel hundreds of miles from their facilities at a moment's notice.

According to NMSCA, their member companies' equipment does not qualify for the 49 CFR 390.3T(f)(5) exception for emergency equipment, so, while firefighters respond as emergency equipment and set up their base camps, they have little food or water until NMSCA members' equipment arrives at a later time. The exemption is needed both to expedite response to the scene of an incident and to allow HOS flexibility for the crews while operating for days at the base camps. While there, the crew members often need to drive CMVs to obtain supplies and, in particular, to obtain tanker trucks of needed water. Although the crew members have substantial rest time and have sleeping quarters on-site, the current HOS regulations may at times hinder their mission support.

The NMSCA requests that the exemption be issued under the following terms and conditions: 1) it would be in effect for periods of time when NMSCA members are operating under a “Resource Order” or other comparable order issued by a Federal government agency; 2) drivers operating under the exemption must be employed by the NMSCA companies; and 3) drivers must provide proof that they are operating for one of the designated NMSCA member companies, and must produce a copy of the relevant “Resource Order”, upon request of a law enforcement officer. The NMSCA also indicated in their application, that when operating under the exemption, their drivers and carriers will comply with all other provisions of the FMCSRs – other than those for which they requested an exemption. Furthermore, the NMSCA member companies will mandate that drivers complete the appropriate modules of the North American Fatigue Management Program and will emphasize to all personnel that the CMVs may not be operated when the driver feels fatigued, regardless of the mission assignments, per 49 CFR 392.3.

By way of background, earlier in 2018, the NMSCA had requested a limited waiver from certain HOS regulations which was a nearly identical request to their recent application for exemption summarized in today’s Federal Register notice. The waiver requested was for drivers employed by NMSCA member companies that are under contract to and have been issued a “Resource Order” by a Federal government agency to provide food and water services to contracted private fire-fighting companies. The 90-day waiver was approved by the FMCSA, and recently expired on October 24, 2018. The Agency had determined that granting NMSCA this waiver was in the public interest, and that the waiver was likely to achieve a level of safety equivalent to the level of safety that would be obtained in the absence of the waiver. The NMSCA added in today’s

exemption request that the 90-day waiver that had received from the Agency was very helpful due to the severity of wildfires in the Western states which allowed them to complete the mission of providing food, water and showers to the Nation's first responders without any disruption to public safety.

A copy of the NMSCA application for exemption is available for review in the docket for this notice.

Issued on: November 20, 2018.

Larry W. Minor,
Associate Administrator for Policy.

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